

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 1:11-cr-10082-JDB-1

TOYA C. GLENN,

Defendant.

ORDER CONSTRUING LETTER AS MOTION FOR COUNSEL  
AND  
DENYING MOTION

Defendant, Toya C. Glenn, has filed a letter requesting that the Court appoint counsel to assist him in pursuing a claim based on the Sixth Circuit's decision in *United States v. Havis*, 927 F.3d 382 (6th Cir.) (en banc) (per curiam), *recons. denied*, 929 F.3d 317 (6th Cir. 2019). (Docket Entry 70.) The Court construes Defendant's letter as a motion for appointment of counsel. For the following reasons, the motion is DENIED.

First, the request for an attorney is premature, as Defendant has not asserted a claim under *Havis* in this or any other proceeding. Second, appointment of counsel to pursue such a claim would be futile. In *Havis*, the Sixth Circuit held that a "Tennessee conviction for delivery of a controlled substance [is] not a controlled-substance offense under the" career-offender enhancement, § 4B1.1 of the United States Sentencing Commission Guidelines Manual, because the state offense encompasses attempted delivery. *United States v. Garth*, \_\_\_ F.3d \_\_\_, 2020 WL 3969283, at \*1-2 (6th Cir. July 14, 2020) (citing *Havis*, 927 F.3d at 387) (emphasis omitted). Glenn's predicate offense for the career-offender enhancement included two Tennessee convictions for "Possession of Cocaine with Intent to Sell[.]" (Presentence Report ¶¶ 24, 29, 41.)

Unlike the defendant in *Havis*, but like the prisoner in *Garth*, Defendant's state conviction for possession with intent is "a completed controlled-substance offense," not an attempt crime. *Garth*, 2020 WL 3969283, at \*3 (holding *Havis* is inapplicable to Tennessee possession with intent to deliver). The motion for counsel is DENIED.

IT IS SO ORDERED this 30th day of July 2020.

s/ J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE